

**THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

DOCKET NO. 2021-324-WS

IN RE: Application of Kiawah Island Utility,)	REBUTTAL TESTIMONY
Incorporated to File Proposed Changes)	
in Rates, Charges, Classifications)	OF
and/or Regulations for Water and)	
Sewer Service.)	CRAIG SORENSEN

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Craig Sorensen, P.E. My principal place of business is 1710 Woodcreek
3 Farms Road, Elgin, South Carolina 29045.

4 **Q. ARE YOU THE SAME CRAIG SORENSEN WHO PREVIOUSLY PROVIDED**
5 **DIRECT TESTIMONY IN THIS PROCEEDING?**

6 A. Yes, I am.

7 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

8 A. The purpose of my rebuttal testimony is to address certain aspects of testimony filed
9 by the Office of Regulatory Staff (“ORS”) and the Town of Kiawah Island (the
10 “Town”) relating to Kiawah Island Utility, Inc. (“KIU” or “Company”). Specifically,
11 I first address ORS’s overall recommended revenue requirement and its observations
12 regarding quality of service. Lastly, I address ORS’s and the Town’s recommendations
13 relating to KIU’s recovery of its secondary pipeline costs.

1 **Q. WHAT IS THE MISSION OF THE OFFICE OF REGULATORY STAFF?**

2 A. As cited in the Direct Testimony of various ORS witnesses, the ORS represents the
3 public interest as defined by the South Carolina General Assembly in S.C. Code Ann.
4 § 58-4-10(B) (Supp. 2020). The definition of Public Interest specifically includes
5 “preservation of continued investment in and maintenance of utility facilities so as to
6 provide reliable and high-quality utility services.”

7 **Q. AS THE PRESIDENT OF KIU, AS WELL AS FOUR OTHER UTILITIES**
8 **CURRENTLY PROVIDING SERVICE TO THE PUBLIC IN SOUTH**
9 **CAROLINA, DO YOU BELIEVE THE ORS’S RECOMMENDED REVENUE**
10 **REQUIREMENT FOR KIU IS IN THE PUBLIC INTEREST? PLEASE**
11 **EXPLAIN.**

12 A. No, I do not. It is, and always will be, of the utmost importance to KIU to provide
13 reliable, high-quality service to its customers while complying with all Commission,
14 state, and local rules and regulations. However, ORS’s recommended revenue,
15 including its recommended return on invested capital, does not promote continued
16 investment in utility facilities.

17 **Q. DO ORS’S RECOMMENDATIONS PROMOTE CONTINUED INVESTMENT**
18 **IN KIU’S FACILITIES?**

19 A. They do not. ORS witness Hunnell states in his Direct Testimony that all customers of
20 a regulated utility are entitled to high-quality service. The Company agrees without
21 reservation. For example, as described in the testimony of KIU witness Dennis, KIU
22 recently invested approximately \$1.7 million to replace its analog meters with AMI

1 meters. Both witness Dennis and witness Hunnell describe the significant customer
2 benefits these meters provide. However, ORS considered KIU to be providing high-
3 quality service even before the meter change-out program. Specifically, in KIU's last
4 rate case, the ORS stated "KIU is a well-operated water and wastewater utility with an
5 established record of providing quality service to its customers. The Company, during the
6 Test Year, demonstrated practical and forward-thinking decision making in its efforts to
7 examine and to pursue additional service enhancements. Customers benefit from the
8 Company's continued investments in infrastructure maintenance which provide reliable
9 water and sewer service during severe weather events such as Hurricane Matthew."¹ By
10 recommending a rate increase that falls below even current inflation levels and
11 recommending a return on capital investment lower than those granted by other state
12 regulatory commissions, ORS makes it more difficult for KIU to make continued
13 investments.

14 **Q. PLEASE RESPOND TO ORS WITNESS HUNNELL'S OBSERVATIONS IN**
15 **HIS DIRECT TESTIMONY REGARDING QUALITY OF SERVICE.**

16 A. Witness Hunnell observes that "customers of all utilities are entitled to service levels
17 commensurate with the Commission's rules and regulations."² KIU agrees 100% with
18 this statement. Ms. Dennis and I described KIU's level of service, and customer
19 expectations of such, in our Direct Testimonies to support the fact that, while minimum

¹ Docket No. 2018-257-WS, Direct Testimony of Matthew P. Schellinger II, page 7, lines 1-6.

² Direct Testimony of Daniel P. Hunnell III, page 17, lines 10-11.

1 standards of service quality are set and enforced by the Commission and the South
2 Carolina Department of Health and Environmental control, utilities are also beholden
3 to the expectations of their customer base. Kiawah Island is, in many respects, a
4 challenging environment in which to operate. For example, much of the resort has
5 expensive landscaping, raising the cost of repairs and outages. High profile events,
6 golf courses, and seasonal demand all place above-average demands on KIU.

7 **Q. SHOULD THE COMMISSION CONSIDER KIU'S QUALITY OF SERVICE,**
8 **FINANCIAL CONDITION, OR OPERATIONAL PERFORMANCE IN**
9 **DETERMINING APPROPRIATE RATES?**

10 A. Yes, it should. ORS has stated "In South Carolina, the Commission has the flexibility
11 to authorize an operating margin at its discretion based on the evidence presented in
12 each general rate case. In the past, ORS based its operating margin recommendation on
13 the quality of service the utility provides its customers and the specifics of the utility's
14 financial condition and operational performance. ORS used this approach to
15 recommend the operating margin for KIU."³ While ORS's statement is in reference to
16 the determination of an appropriate operating margin, it would also logically apply to
17 the return-on-rate-base methodology proposed by ORS.

³ Docket 2018-257-WS, Direct Testimony of Matthew P. Schellinger II, page 6, lines 12-17(emphasis added),

1 **Q. HAS THE ORS REVIEWED KIU’S QUALITY OF SERVICE, FINANCIAL**
2 **CONDITION, AND OPERATIONAL PERFORMANCE?**

3 A. Yes, it has, both in this case and in previous cases before the Commission. In his Direct
4 Testimony, ORS witness Hunnell states that he reviewed KIU’s application, responses
5 to discovery requests, on-site inspections, financial statements, annual Commission
6 reports, and performance bond documents.⁴ He says “...ORS commends KIU for its
7 efforts in [*sic*] to restore service quickly and minimize the water outage and for its
8 overall quality of service...”⁵ Moreover, as shown in witness Hunnell’s exhibit DPH-
9 1, not a single item in his business office compliance review or system inspection
10 reports is out of compliance.

11 ORS has repeatedly recognized the excellent quality of service, financial
12 condition, and operational performance of KIU. For instance, in KIU’s last rate case,
13 Jeffrey M. Nelson, ORS Chief Legal Officer at the time, stated on the record at the
14 hearing:

15 ...I would just like to add that ORS views this as a very good
16 company. A lot of utilities that we regulate, we tend to have a hard
17 time with. Always, when we’re dealing with Kiawah and
18 SouthWest, they’ve been very cooperative in providing the
19 information to us, answering any requests that we have, and willing

⁴ Direct Testimony of Daniel P. Hunnell III, page 4, line 20 through page 5 line 2

⁵ Direct Testimony of Daniel P. Hunnell III, page 17, lines 14-16

1 to give some give-and-take, too, as we're going through these rate
2 cases. So I just wanted to take the chance to say how much we
3 appreciate their doing business in South Carolina.⁶

4 **Q. PLEASE SUMMARIZE THE ORS'S AND THE TOWN'S**
5 **RECOMMENDATIONS RELATING TO RECOVERY OF THE ADDITIONAL**
6 **COSTS ASSOCIATED WITH THE SECONDARY SUPPLY PIPELINE.**

7 A. ORS Witness Hipp proposes to remove the full \$2.4 million of incremental secondary
8 supply pipeline costs the Company paid to the contractor ("Contractor") on the basis
9 of its not being used and useful and for the Company's failure to obtain insurance.
10 Witness John D. Labriola, on behalf of the Town, also recommends disallowance of
11 the recovery of the costs, stating that the utility should be responsible for the additional
12 costs.

13 **Q. IS THE SECONDARY PIPELINE CURRENTLY USED AND USEFUL?**

14 A. Yes, the pipeline project ("Project") was placed into service in February of 2017. This
15 is not disputed by either ORS or the Town.

16 **A. SHOULD THE COSTS ASSOCIATED WITH THE SETTLEMENT BE**
17 **INCLUDED AS PART OF THE OVERALL COST OF THE PIPELINE?**

18 A. Yes. However, Witness Hipp disputes the \$2.4 million as not representing a capital
19 investment, nor part of the overall Project costs that should be recovered, on the
20 premise that nothing was received in exchange for the reimbursement. The \$2.4

⁶ Transcript, p. 113, l. 4-15, March 28, 2019, Hearing # 11764, Docket No. 2018-257-WS.

1 million, along with the remainder of the \$7 million of additional capital investment, is
2 detailed in the Contractor's claim by item and date and are undoubtedly related to the
3 completion of the infrastructure pipeline under contract. Further, the permit to operate
4 would never have been issued without the additional costs being spent, because it
5 would not have been completed.

6 **Q. WHY WAS THE AMOUNT IN DISPUTE NOT INCLUDED FOR RECOVERY**
7 **IN PRIOR PROCEEDINGS?**

8 A. I have been involved in project construction my entire career; currently I oversee water
9 and wastewater utility projects but was a project manager dealing with underground
10 construction prior to joining SouthWest Water Company. I have witnessed unexpected
11 issues arise in numerous projects; project conditions, especially underground, can vary
12 quickly and unexpectedly. The project in question was no different. As acknowledged
13 in Witness Hipp's Direct Testimony, *at the time*, the state of horizontal directional
14 drilling ("HDD") technology required the Company to rely on the expertise of a
15 Contractor to carry out the project, following their own design and plans. As a result,
16 the Company was forced to also rely on the decision-making of the Contractor when it
17 had to unfortunately and unexpectedly drill a second borehole for the pipeline.

18 The Company did not include in prior proceedings, nor initially reimburse the
19 Contractor, the additional costs it incurred because the amount of additional costs the
20 utility should pay had not been agreed upon. It was the Company's duty to prudently
21 question the added costs to ensure the project was delivered to the customers at lowest
22 cost. Ultimately, the Contractor chose to litigate those costs, which took considerable

1 time and resources to resolve. It was not the desire of the Company, nor the Contractor,
2 to have to pay for, or to drill, a second hole; however, the facts of the Project cannot be
3 ignored. At the time, this was the longest HDD project for this diameter of pipe in the
4 world. And the nature of underground construction did not allow for the Company, nor
5 the Contractor, to see what caused the issue that forced a second drill or to have
6 foreseen what would have caused it ahead of time. Nonetheless, the Company does
7 not dispute the work had to be done, and the resulting money had to be spent, in order
8 to complete the Project. This \$2.4 million represents real costs that were incurred to
9 complete the Project. The timing of the payment to reimburse the Contractor for money
10 spent does not exclude it from being an actual necessary cost of a used and useful asset.

11 **Q. PLEASE RESPOND TO ORS WITNESS HIPPI'S ASSERTION THAT THE**
12 **COMPANY FAILED TO MITIGATE RISK BY NOT OBTAINING THE**
13 **NECESSARY INSURANCE COVERAGE.**

14 A. The Company vehemently disagrees with the assertion that we did not mitigate risk and
15 ensure proper insurance was obtained by the appropriate party. The Company carried
16 an All-Risk policy, which included Builders Risk as well as other coverages. But the
17 Company made special efforts to place the burden of carrying insurance specific to the
18 Project onto the Contractor. Before moving forward with the Project and executing the
19 contract ("Contract"), several iterations of obligation reviews were performed to
20 explicitly define which party was responsible for obtaining proper insurance. The
21 Company finally felt secure and financially covered based on the final Contract
22 language, specifically the following items:

- 1 1. Special Conditions and Supplementary Conditions to the Contract stating
2 that the Contractor, and not KIU, was responsible for obtaining appropriate
3 insurance coverages, and that the Contractor's Commercial General
4 Liability Insurance would be primary insurance ahead of any coverage the
5 Company may elect to carry (see emphasized language on Exhibit 1);
- 6 2. Defined Terms to the Contract, No. 46, references those "Supplementary
7 Conditions" as "*That part of the Contract Documents which amends or*
8 *supplements these General Conditions*"; and
- 9 3. Article 21 of the Contract in the "Instructions for Bidders" stating
10 "*CONTRACTORS AND SUBCONTRACTOR'S INSURANCE: Contractor*
11 *shall not commence work under this contract until obtaining all the*
12 *insurance required by the Supplementary Conditions*".

13 The Company verified that the Contractor's Certificate of Insurance for the Project did,
14 in fact, include Builders Risk insurance for the project, along with many other
15 coverages, with \$25 million limit of coverage per HDD occurrence (See Exhibit 2).

16 And finally, prior to the Contract execution, the Company took even greater
17 comfort with the Contractor's explicit statement that it would obtain the necessary
18 builders risk insurance as can be seen in the highlighted comment "[BJ4]" to Item No.
19 7 of Contract negotiations in Exhibit 3. So, I was shocked when the Court found it was
20 the Company's obligation to procure insurance under the Contract.

1 **Q. DO YOU FEEL THE COMPANY MADE PRUDENT AND REASONABLE**
2 **EFFORTS TO MINIMIZE THE FINANCIAL IMPACTS?**

3 Yes. As explained above, the Company believes the ultimate agreement to reimburse
4 the Contractor for expenses it incurred to complete the Project was a prudent business
5 decision, given all circumstances at the time, and was in the balanced interest of its
6 customers and the Company. The fact that the Company settled at \$2.4 million,
7 compared to the additional \$7 million that was pursued in recovery, is prudent in and
8 of itself. The Company spent over two years of time and litigation costs doing
9 everything possible to minimize the results of what can only be described in hindsight
10 as an unfortunate event. It is important to note that those substantial litigation costs
11 will never be recovered in the current or previous filings, nor future filings, as the
12 Company removed them from their request. And finally, while it is the Company's
13 position that it did what it could for an appropriate time period, it was also a prudent
14 business decision to disengage and not risk significant additional resources.

15 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

16 A. Yes, it does.

canceled or materially altered, except after 10 days written notice has been received by the Owner."

- b. **Insurance Requirements:** The Contractor hereby agrees that as a condition precedent to commencing Work under this Contract, it will present to the Owner acceptable certificates of insurance and corresponding endorsements evidencing the maintenance of the following insurance coverage of the Contractor. Contractor will maintain said insurance in force at all times during the performance of any Work and for a period of eight (8) years following completion of its Work.

The Contractor (and its consultants and Subcontractors or anyone directly or indirectly employed by any of them unless other insurance requirements are approved in writing, in advance by Owner, will provide and maintain the following types and amounts of insurance pursuant to the most current ISO forms if the forms stated below have been updated.:

1. **Commercial General Liability Insurance:** Contractor must provide Commercial General Liability insurance using the 2007 ISO Occurrence Form (CG 00 01 12 07), or an equivalent form. The Commercial General Liability insurance must include covered for "Premises-Operations," "Independent Contractors," "Products-Completed Operations," "Personal Injury," and "Contractual Liability" and must not include an exclusion for "action over" claims. The "Contractual Liability" must include the tort liability of another assumed in a business contract. The Contractor or his agent shall verify that there is no endorsement or modification of the CGL limiting the scope of coverage for liability arising from "explosion," "collapse," or "underground" property damage (known as the "x,c,u" exclusions). This insurance shall be maintained throughout the duration of the Project and for a minimum of eight (8) years following completion of its Work. Limits shall be as follows:

Each Occurrence Limit

Bodily Injury/Property Damage Liability	\$1,000,000
Personal Injury Liability	\$1,000,000
General Aggregate Limit	\$2,000,000
Products/Completed Operations Aggregate Limit	\$2,000,000

This policy must include:

The General Aggregate Limit is to be written on a "per project" basis using contractor's "Per Project endorsement: **Amendment-Aggregate Limits of Insurance** (CG 2503 or equivalent form). The "**Products/Completed Operations Aggregate Limit** must be \$2,000,000, or written confirmation provided that the commercial Umbrella coverage affirmatively

"follows form" and includes liability coverage arising out of the insured's "Completed Operations."

The Owner, including its subsidiaries, partners, partnerships, affiliated companies, successors, and assigns, are to be named as an additional insured in the Contractor's policies with respect to this project using the **Additional Insured-Owners,...Contractor** endorsements (CG 20 10 10 01 & 20 37 10 01 or the current versions thereof), or a substitute providing equivalent coverage. Verification of additional insured status shall be furnished to Owner by mailing a copy of the endorsement AND Certificate of Insurance.

This insurance will apply as primary insurance with respect to any other insurance or self-insurance the Owner may have or elect to carry with respect to this Project.

Broad Form Property Damage coverage, including completed operations of its equivalent.

The Work "performed on your behalf by a subcontractor" exception to the "Damage to Your Work" exclusion (Exclusion "I" in Section I of the ISO form CG 00 01 10 01 and earlier versions).

There shall be no exclusions for continuing or progressive losses not known by Contractor to exist prior to policy inception.

2. Business Automobile Liability Insurance: Contractor must provide and maintain business automobile liability insurance for all "owner," "non-owned," and "hired" vehicles on the current version of ISO form CA 000 01 12/90 or equivalent coverage form with the following limits:

Combined Single Limit \$1,000,000 per accident

Equivalent "split limits" satisfying the Umbrella Excess Liability underlying requirements are acceptable, but should be noted on the Certificate of Insurance.

If necessary, the Business Automobile Liability policy shall be endorsed to provide contractual liability coverage per the current version of the ISO CA 00 01 form.

The Owner, including its subsidiaries, partners, partnerships, affiliated companies, successors, and assigns, are to be named as an additional insured on the Business Automobile Liability policy. Verification of additional insured status shall be furnished to Owner by mailing a copy of the endorsement and Certificate of Insurance.



CERTIFICATE OF LIABILITY INSURANCE

5/1/2017

DATE (MM/DD/YYYY)
 4/21/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER LOCKTON COMPANIES 5847 SAN FELIPE, SUITE 320 HOUSTON TX 77057 866-260-3538	CONTACT NAME:	
	PHONE (A/C, No, Ext):	FAX (A/C, No):
INSURED 1412207 MEARS GROUP, INC. A QUANTA SERVICES COMPANY 4500 NORTH MISSION ROAD ROSEBUSH MI 48878	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
	INSURER A: Old Republic Insurance Company	NAIC #
	INSURER B: ACE Property & Casualty Insurance Co	20699
	INSURER C: See Attached	
	INSURER D:	
INSURER E:		
INSURER F:		

COVERAGES DASIN01 CERTIFICATE NUMBER: 14018258 REVISION NUMBER: XXXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

TYPE OF INSURANCE	ADDL INSD	SUBR WYO	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER	Y	N	MWZY 307276	5/1/2016	5/1/2017	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Per occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A <input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	Y	N	MWTB 307275	5/1/2016	5/1/2017	COMBINED SINGLE LIMIT (Per accident) \$ 1,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX
B <input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$	Y	N	XOC G27972032 001	5/1/2016	5/1/2017	EACH OCCURRENCE \$ 12,000,000 AGGREGATE \$ 12,000,000
A WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	MWC 307277 00	5/1/2016	5/1/2017	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER EL EACH ACCIDENT \$ 1,000,000 EL DISEASE - EA EMPLOYEE \$ 1,000,000 EL DISEASE - POLICY LIMIT \$ 1,000,000
C Property	Y	N	B0180ME1504780	5/1/2016	5/1/2017	See Attached

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101. Additional Remarks Schedule, may be attached if more space is required)
 Re: Kiawah Island Project.

CERTIFICATE HOLDER

CANCELLATION See Attachments

14018258

Kiawah Island Utility, Inc.
 31 Sora Rail Road
 Johns Island SC 29455

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

[Signature]

CONTINUATION DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS (Use only if more space is required)

Additional Insured in favor of Kiawah Island Utility, Inc., including its subsidiaries, partners, partnerships, affiliated companies, successors, and assigns (on all policies except Workers' Comp/EL) where and to the extent required by written contract. Waiver of Subrogation in favor of Kiawah Island Utility, Inc., including its subsidiaries, partners, partnerships, affiliated companies, successors, and assigns on all policies where and to the extent required by written contract where permissible by law. The Insurance afforded to the Additional Insured as described in this Certificate of Insurance for work performed by the Named Insured is primary and non-contributory to any similar coverage maintained by the Additional Insured where and to the extent required by contract. 30 days notice of cancellation is included on the policies.

Builders Risk / Contractors Equipment / Real & Personal Property Policy No. B0180ME1504780
Insurer: 50% Swiss Re International SE / 50% Lloyds Syndicate Chubb 1882 through R.K. Harrison
Policy Term: May 1, 2016 to May 1, 2017

SECTION I - BUILDERS RISK:

Limits/Sub Limits:

\$ 75,000,000	Any One Occurrence for any Insured Project
\$ 10,000,000	Any One Occurrence as respects Covered Property in Temporary Offsite locations
\$ 25,000,000	Any One Occurrence as respects Horizontal Directional Drilling Works
\$ 10,000,000	Any One Occurrence as respects Covered Property in Transit
\$ 10,000,000	Any One Occurrence as respects Debris Removal or 25% of loss amount, whichever is less
\$ 25,000,000	Any One Occurrence as respects Expediting Expense
\$ 2,500,000	Any One Occurrence as respects Extra Expense

Aggregate Limits of Liability (Subject to Policy Aggregate Limits of Liability):

\$ 50,000,000	Any One Occurrence/Annual Aggregate Flood - Flood Level 1 and U.S. Territories & Possessions, and the Commonwealth of Puerto Rico and any foreign project location(s).
\$ 25,000,000	Any One Occurrence/Annual Aggregate Earthquake - California
\$ 50,000,000	Any One Occurrence/Annual Aggregate Earthquake - within all other Earthquake Zone1
\$ 50,000,000	Any One Occurrence/Annual Aggregate Named Windstorm within Wind Zone 1

Valuation:

The actual cost to repair or replace the lost or damaged property, valued as of the time and place of loss, with material of like kind and quality.

SECTION II - CONTRACTORS EQUIPMENT:

Limits/Sub Limits:

\$ 50,000,000	Any One Occurrence as respects Contractors Equipment
\$ 5,000,000	Any One Occurrence as respects Property for Rigging

Aggregate Limits of Liability (Subject to Policy Aggregate Limits of Liability):

\$ 25,000,000	Any One Occurrence/Annual Aggregate Flood occurring within any Flood Level 1 areas,
\$ 50,000,000	Any One Occurrence/Annual Aggregate Flood within US Territories & Possessions, and the Commonwealth of Puerto Rico and any foreign project location(s).
\$ 10,000,000	Any One Occurrence/Annual Aggregate Earthquake - California
\$ 25,000,000	Any One Occurrence/Annual Aggregate Earthquake - within all other Earthquake Zone1
\$ 25,000,000	Any One Occurrence/Annual Aggregate Named Windstorm within Wind Zone 1

Valuation:

For repairing or rebuilding Contractor's Equipment provided by an entity owned or operated by the Insured at the time of physical loss or physical damage: 1) Direct payroll cost for labor directly chargeable to the repair or rebuilding of the damaged Contractor's Equipment; 2) The proper proportion of the Insured's overhead charges, calculated in accordance with principles of Direct Costing; 3) Expenses for the dismantling, transportation, and reassembly, and 4) Materials at cost to the Insured.

SECTION III - REAL & PERSONAL PROPERTY

Limits/Sub Limits:

\$ 50,000,000	Any One Occurrence as respects physical loss or damage
\$ 5,000,000	Any One Occurrence as respects Extra Expense per premises
\$ 1,000,000	Any One Occurrence as respects Covered Property in Transit

Aggregate Limits of Liability (Subject to Policy Aggregate Limits of Liability):

\$ 25,000,000	Any One Occurrence/Annual Aggregate Flood occurring within any Flood Level 1 areas,
\$ 50,000,000	Any One Occurrence/Annual Aggregate Flood within US Territories & Possessions, and the Commonwealth of Puerto Rico and any foreign project location(s).
\$ 10,000,000	Any One Occurrence/Annual Aggregate Earthquake - California
\$ 25,000,000	Any One Occurrence/Annual Aggregate Earthquake - within all other Earthquake Zone1
\$ 25,000,000	Any One Occurrence/Annual Aggregate Named Windstorm within Wind Zone 1

Valuation:

The lesser of a) the Replacement Cost, or b) the Amount the Insured Actually Spends to repair, rebuild, or replace the Covered Property at the same or another location. Real Property or Personal Property other than Improvements and Betterments, which is not repaired, rebuilt or replaced, will be valued at the Actual Cash Value at the time and place of loss or damage.

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 25 03 05 09

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED CONSTRUCTION PROJECT(S) GENERAL AGGREGATE LIMIT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Designated Construction Project(s):

Kiawah Island Utility, Inc., including its subsidiaries, partners, partnerships, affiliated companies, successors, and assigns

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

- A. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I - Coverage A, and for all medical expenses caused by accidents under Section I - Coverage C, which can be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
1. A separate Designated Construction Project General Aggregate Limit applies to each designated construction project, and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.
 2. The Designated Construction Project General Aggregate Limit is the most we will pay for the sum of all damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under Coverage C regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought or
 - c. Persons or organizations making claims or bringing "suits".
 3. Any payments made under Coverage A for damages or under Coverage C for medical expenses shall reduce the Designated Construction Project General Aggregate Limit for that designated construction project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Construction Project General Aggregate Limit for any other designated construction project shown in the Schedule above.
 4. The limits shown in the Declarations for Each Occurrence, Damage To Premises Rented To You and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Designated Construction Project General Aggregate Limit.

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Policy Period: 5/1/2016 to 5/1/2017

Attachment Code : D488277

Certificate ID: 14018258

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 37 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location and Description Of Completed Operations
Kiawah Island Utility, Inc., including its subsidiaries, partners, partnerships, affiliated companies, successors, and assigns	SC
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II - Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to Section III - Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

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Policy Period: 5/1/2016 to 5/1/2017

C. With respect to the insurance afforded to these additional insureds, the following is added to

Section III - Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or

2. Available under the applicable Limits of Insurance shown in the Declarations; whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 10 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED - OWNERS, LESSEES OR
CONTRACTORS - SCHEDULED PERSON OR
ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
Kiawah Island Utility, Inc., including its subsidiaries, partners, partnerships, affiliated companies, successors, and assigns	SC
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II - Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

In the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

- B. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I - Coverage A, and for all medical expenses caused by accidents under Section I - Coverage C, which cannot be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
1. Any payments made under Coverage A for damages or under Coverage C for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-completed Operations Aggregate Limit, whichever is applicable; and
 2. Such payments shall not reduce any Designated Construction Project General Aggregate Limit.
- C. When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Designated Construction Project General Aggregate Limit.
- D. If the applicable designated construction project has been abandoned, delayed, or abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same construction project.
- E. The provisions of Section III - Limits Of Insurance not otherwise modified by this endorsement shall continue to apply as stipulated.

KIU Comments
November 25, 2015

Here are the major changes/clarifications to the contract documents which we would like to discuss with KIU before finalizing our pricing.

1. **Limit of Liability:** We request a cap on our overall liability equal to the applicable insurance limits for insured claims ~~to the extent such claims are actually paid to Kiawah~~ and, for other (non-insured) claims, the compensation paid to us under the contract.
2. **Liquidated Damages:** May we agree that liquidated damages for delay will not exceed 5% of the contract price? We agree
3. **Site Conditions:** We propose that our bid price be based on the geotechnical information provided by KIU, without any additional investigation to be performed by Mears, and that General Condition 4.3 govern the issues of additional compensation and time for differing conditions. Already covered by existing language of 4.02 and 4.03. No change required.
4. **Underground Facilities:** We propose that General Condition 4.4 govern the issues of additional compensation, additional time, and liability for unidentified or mislocated underground facilities. Article 4.04 covers this. No change required.
5. **Indemnification:** We propose that General Condition 6.20 govern our obligations of defense and indemnity. Agreed. No change required.
6. **Insurance Limits and Duration of Coverage:** We request (i) that the required insurance limits be expressed as fixed amounts, rather than as minimum amounts; and (ii) that the required duration of the insurance be reduced from 10 years to 8 years. Agreed, provided the Umbrella Coverage is increased to \$12 million.
7. **Additional Insured:** We request that KIU's rights as an additional insured apply except to the extent that any claim arises from or in connection with (i) the negligence, willful misconduct, or other fault of KIU, Engineer, their other contractors and consultants of any tier, and as to each of the foregoing, their officers, directors, members, partners, employees, and agents, or (ii) an event of force majeure. Kiawah cannot agree to this point.
8. **ISO Forms:** We request substitution of the current ISO forms for the outdated ISO forms named in the contract docs. Agreed
9. **Insurance Policies:** We can provide information about our policies, but the policies themselves are confidential. Okay
10. **Work Hours:** We request authorization to work 12 hours per day six days per week. OK
11. **Claim for Additional Time:** The last sentence of new SC-10.05(b) should be deleted. Modify the last sentence to delete the word "Once" and insert the word "Unless"
12. **Conditions for Final Payment:** Modify new SC-14.07(e) to read as follows: "All approvals from applicable governmental authorities, except any such approval which is denied, delayed, or withheld due to force majeure, or the act or omission of KIU or those for whom it is responsible." Agreed.
13. **Excess Liability Insurance:** We will provide \$12 million in Excess Liability insurance. OK

Commented [B11]: The purpose of this insertion is unclear to me. The cap on our liability is to be the same as the applicable insurance limit stated in the contract. We know what those limits are and we can specify them here if that would make this clearer. (While we would ordinarily use the insurance proceeds to pay a claim, we would still be liable to KIU up to those limits even if for some reason the insurance proceeds are not received.)

Commented [B12]: Okay as long as there is nothing to the contrary in the agreement.

Commented [B13]: Okay as long as there is nothing to the contrary in the agreement.

Commented [B14]: There appears to be some misunderstanding. I don't think KIU expects us to pay for loss or damage which is due to the negligence of KIU, its engineer, or other contractors, do you? If our insurer pays any such claim, it would increase our premiums in the coming years to offset the claim paid, so that it would eventually come out of our pocket. We are providing builder's risk insurance. Doesn't that address your concern?

Commented [B15]: Okay.